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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

CYNTHIA BRIONES and MAURICE
BRIONES, in each case individually
and as a successor in interest to Kyle
Briones, deceased,

Plaintiffs,

vs.

CITY OF ONTARIO and DOES 1-10,
inclusive,

Defendants.

Case No. 5:17-cv-00590

COMPLAINT FOR DAMAGES

1. Unreasonable Search and Seizure—Detention and Arrest (42 U.S.C. § 1983)
2. Unreasonable Search and Seizure—Excessive Force (42 U.S.C. § 1983)
3. Unreasonable Search and Seizure—Denial of Medical Care (42 U.S.C. § 1983)
4. Due Process—Interference with Familial Relationship (42 U.S.C. § 1983)
5. Municipal Liability – Ratification (42 U.S.C. § 1983)
6. Municipal Liability – Inadequate Training (42 U.S.C. § 1983)
7. Municipal Liability – Unconstitutional Custom, Practice, or Policy (42 U.S.C. § 1983)

DEMAND FOR JURY TRIAL

1 California Code of Civil Procedure § 377.60. CYNTHIA BRIONES seeks both
2 survival and wrongful death damages under federal law.

3 6. Plaintiff MAURICE BRIONES is an individual residing in the City of
4 Ontario, California, and is the natural father of DECEDENT. MAURICE BRIONES
5 sues both in his individual capacity as the father of DECEDENT and in a
6 representative capacity as a successor-in-interest to DECEDENT pursuant to
7 California Code of Civil Procedure § 377.60. MAURICE BRIONES seeks both
8 survival and wrongful death damages under federal law.

9 7. At all relevant times, Defendant CITY OF ONTARIO (“CITY”) is and
10 was a duly organized public entity, form unknown, existing under the laws of the
11 State of California. CITY is a chartered subdivision of the State of California with
12 the capacity to be sued. CITY is responsible for the actions, omissions, policies,
13 procedures, practices, and customs of its various agents and agencies, including the
14 City of Ontario Police Department and its agents and employees. At all relevant
15 times, Defendant CITY was responsible for assuring that the actions, omissions,
16 policies, procedures, practices, and customs of the City of Ontario Police
17 Department and its employees and agents complied with the laws of the United
18 States and of the State of California. At all relevant times, CITY was the employer
19 of Defendants DOES 1-10.

20 8. Defendants DOES 1-5 (“DOE OFFICERS”) are police officers for the
21 City of Ontario Police Department. DOE OFFICERS were acting under color of law
22 within the course and scope of their duties as officers for the City of Ontario Police
23 Department. DOE OFFICERS were acting with the complete authority and
24 ratification of their principal, Defendant CITY.

25 9. Defendants DOES 6-8 are supervisory officers for the City of Ontario
26 Police Department who were acting under color of law within the course and scope
27 of their duties as police officers for the City of Ontario Police Department. DOES
28

1 6-8 were acting with the complete authority and ratification of their principal,
2 Defendant CITY.

3 10. Defendants DOES 9-10 are managerial, supervisory, and
4 policymaking employees of the City of Ontario Police Department, who were acting
5 under color of law within the course and scope of their duties as managerial,
6 supervisory, and policymaking employees for the City of Ontario Police
7 Department. DOES 9-10 were acting with the complete authority and ratification of
8 their principal, Defendant CITY.

9 11. On information and belief, DOES 1-10 were residents of the County of
10 San Bernardino, California.

11 12. In doing the acts and failing and omitting to act as hereinafter
12 described, Defendants DOE OFFICERS were acting on the implied and actual
13 permission and consent of Defendants DOES 6-10.

14 13. In doing the acts and failing and omitting to act as hereinafter
15 described, Defendants DOES 1-10 were acting on the implied and actual permission
16 and consent of the CITY.

17 14. The true names and capacities, whether individual, corporate,
18 association or otherwise of Defendants DOES 1-10, inclusive, are unknown to
19 Plaintiffs, who otherwise sue these Defendants by such fictitious names. Plaintiffs
20 will seek leave to amend this complaint to show the true names and capacity of
21 these Defendants when they have been ascertained. Each of the fictitiously-named
22 Defendants is responsible in some manner for the conduct or liabilities alleged
23 herein.

24 15. DOES 1-10 are sued in their individual capacity.

25 16. At all times mentioned herein, each and every defendant was the agent
26 of each and every other defendant and had the legal duty to oversee and supervise
27 the hiring, conduct, and employment of each and every defendant.
28

1 17. All of the acts complained of herein by Plaintiffs against Defendants
2 were done and performed by said Defendants by and through their authorized
3 agents, servants, and/or employees, all of whom at all relevant times herein were
4 acting within the course, purpose, and scope of said agency, service, and/or
5 employment capacity. Moreover, Defendants and their agents ratified (or will
6 ratify) all of the acts complained of herein.

7 18. On December 28, 2016, Plaintiffs filed a comprehensive and timely
8 claim for damages with the City of Ontario pursuant to applicable sections of the
9 California Government Code.

10 19. On February 10, 2017, the City of Ontario denied Plaintiffs' claims.
11

12 **FACTS COMMON TO ALL CLAIMS FOR RELIEF**

13 20. Plaintiffs repeat and re-allege each and every allegation in paragraphs 1
14 through 19 of this Complaint with the same force and effect as if fully set forth
15 herein.

16 21. On October 5, 2016, at approximately 1:15 a.m., a tire blew out on
17 DECEDENT's vehicle, causing him to lose control of the vehicle and collide with a
18 street sign. This single-vehicle collision occurred near the intersection of Archibald
19 Avenue and Ontario Ranch Road, in the City of Ontario, California. A civilian
20 motorist observed DECEDENT's disabled vehicle and called 9-1-1. DOE
21 OFFICERS responded to the call. After DOE OFFICERS arrived, DECEDENT
22 exited the vehicle and was able to walk, although with great difficulty. Rather than
23 addressing DECEDENT's injuries, DOE OFFICERS forced DECEDENT into a
24 prone position on the ground and attempted to handcuff DECEDENT. Additional
25 DOE OFFICERS arrived on scene and assisted with the efforts to handcuff
26 DECEDENT. In the process, DOE OFFICERS placed pressure on DECEDENT's
27 back and stood and knelt on the back of DECEDENT's thighs. DOE OFFICERS
28 then proceeded to use Tasers on DECEDENT. After using Tasers on DECEDENT,

1 DOE OFFICERS cuffed DECEDENT's wrists and ankles. On information and
2 belief, DECEDENT was held down in a prone position for fifteen to twenty
3 minutes.

4 22. After both his wrists and ankles were cuffed, and while still prone,
5 DECEDENT became unresponsive. DOE OFFICERS then turned DECEDENT
6 over onto his back. DOE OFFICERS realized DECEDENT was not breathing and
7 began, without success, to administer CPR. Paramedics arrived, administered CPR,
8 and then transported DECEDENT to Kaiser Hospital, where DECEDENT was
9 pronounced dead.

10 23. After DECEDENT's vehicle struck the street sign as a result of the tire
11 blowing out, DECEDENT was bleeding, groaning from pain, and in obvious and
12 critical need of emergency medical care and treatment. However, rather than
13 treating DECEDENT immediately or calling for medical personnel to treat his
14 injuries that resulted from the vehicle collision, DOE OFFICERS forced
15 DECEDENT into a prone position. After DECEDENT lost consciousness following
16 the handcuffing wherein DOE OFFICERS placed pressure on DECEDENT's
17 backside, DOE OFFICERS did not timely summon medical care or permit medical
18 personnel to treat DECEDENT. The delay of medical care to DECEDENT caused
19 DECEDENT extreme physical and emotional pain and suffering, and was a
20 contributing cause of DECEDENT's death.

21 24. The use of force against DECEDENT was excessive and objectively
22 unreasonable under the circumstances, especially because DECEDENT did not pose
23 an immediate threat of death or serious bodily injury to anyone at all relevant times,
24 including Defendants DOE OFFICERS.

25 25. Plaintiff CYNTHIA BRIONES is DECEDENT's successor-in-interest
26 as defined in Section 377.11 and succeeds to DECEDENT's interest in this action as
27 the natural mother of DECEDENT.

28

1 26. Plaintiff MAURICE BRIONES is DECEDENT's successor-in-interest
2 as defined in Section 377.11 and succeeds to DECEDENT's interest in this action as
3 the natural father of DECEDENT.

4
5 **FIRST CLAIM FOR RELIEF**

6 **Unreasonable Search and Seizure—Detention and Arrest (42 U.S.C. § 1983)**

7 (Against Defendants DOE OFFICERS)

8 27. Plaintiffs repeat and re-allege each and every allegation in paragraphs 1
9 through 26 of this Complaint with the same force and effect as if fully set forth
10 herein.

11 28. Defendants DOE OFFICERS detained DECEDENT without reasonable
12 suspicion and arrested him without probable cause.

13 29. DOE OFFICERS violated DECEDENT's right to be secure in his
14 person against unreasonable searches and seizures as guaranteed to DECEDENT
15 under the Fourth Amendment to the United States Constitution and applied to state
16 actors by the Fourteenth Amendment.

17 30. The conduct of DOE OFFICERS was willful, wanton, malicious, and
18 done with reckless disregard for the rights and safety of DECEDENT, and therefore
19 warrants the imposition of exemplary and punitive damages as to Defendants DOE
20 OFFICERS.

21 31. This unreasonable detention, arrest, and restraint caused Plaintiffs' and
22 DECEDENT's injuries. As a result of their misconduct, Defendants DOE
23 OFFICERS are liable for DECEDENT's injuries, either because they were integral
24 participants in the wrongful detention and arrest, or because they failed to intervene
25 to prevent these violations.

26 32. Plaintiffs bring this claim as successors-in-interest to DECEDENT, and
27 seek both survival and wrongful death damages for the violation of DECEDENT's
28

1 rights. Plaintiffs also seek funeral and burial expenses and attorney's fees under this
2 claim.

4 **SECOND CLAIM FOR RELIEF**

5 **Unreasonable Search and Seizure—Excessive Force (42 U.S.C. § 1983)**

6 (Against Defendants DOE OFFICERS)

7 33. Plaintiffs repeat and re-allege each and every allegation in paragraphs 1
8 through 32 of this Complaint with the same force and effect as if fully set forth
9 herein.

10 34. DOE OFFICERS forced DECEDENT into a prone position on the
11 ground and attempted to handcuff DECEDENT. Additional DOE OFFICERS
12 arrived on scene and assisted with the efforts to handcuff DECEDENT. In the
13 process, DOE OFFICERS placed pressure on DECEDENT's back and stood and
14 knelt on the back of DECEDENT's thighs. DOE OFFICERS proceeded to use
15 Tasers on DECEDENT. After using Tasers on DECEDENT, DOE OFFICERS
16 cuffed DECEDENT's wrists and ankles. On information and belief, DECEDENT
17 was held down in a prone position for fifteen to twenty minutes. This, along with
18 other undiscovered uses of force against DECEDENT, constitutes unreasonable and
19 excessive force.

20 35. Defendants DOE OFFICERS' unjustified use of force, in particular, the
21 unreasonable restraint, deprived DECEDENT of his right to be secure in his person
22 against unreasonable searches and seizures as guaranteed to DECEDENT under the
23 Fourth Amendment to the United States Constitution and applied to state actors by
24 the Fourteenth Amendment.

25 36. As a result of the foregoing, DECEDENT suffered great physical pain
26 and emotional distress up to the time of his death, loss of enjoyment of life, loss of
27 life, and loss of earning capacity.
28

1 37. The conduct of Defendants DOE OFFICERS was willful, wanton,
2 malicious, and done with reckless disregard for the rights and safety of
3 DECEDENT, and therefore warrants the imposition of exemplary and punitive
4 damages as to Defendants DOE OFFICERS.

5 38. The use of force was excessive and unreasonable, especially because
6 DECEDENT did not pose an immediate threat of death or serious bodily injury to
7 anyone, including Defendants DOE OFFICERS.

8 39. DOE OFFICERS integrally participated or failed to intervene in the use
9 of force.

10 40. As a result of their misconduct, Defendants DOE OFFICERS are liable
11 for DECEDENT's injuries, either because they were integral participants in the use
12 of force, or because they failed to intervene to prevent it.

13 41. Plaintiffs bring this claim as successors-in-interest to DECEDENT, and
14 seek both survival and wrongful death damages for the violation of DECEDENT's
15 rights. Plaintiffs also seek funeral and burial expenses and attorney's fees under this
16 claim.

17
18 **THIRD CLAIM FOR RELIEF**

19 **Unreasonable Search and Seizure—Denial of Medical Care (42 U.S.C. § 1983)**

20 (Against Defendants DOE OFFICERS)

21 42. Plaintiffs repeat and re-allege each and every allegation in paragraphs 1
22 through 41 of this Complaint with the same force and effect as if fully set forth
23 herein.

24 43. After DECEDENT's vehicle struck the street sign as a result of the tire
25 blowing out, DECEDENT was bleeding, groaning from pain, and in obvious and
26 critical need of emergency medical care and treatment. However, rather than
27 treating DECEDENT immediately or calling for medical personnel to treat his
28 injuries that resulted from the vehicle collision, DOE OFFICERS forced

1 DECEDENT into a prone position. After DECEDENT lost consciousness following
2 the handcuffing wherein DOE OFFICERS placed pressure on DECEDENT's
3 backside, DOE OFFICERS did not timely summon medical care or permit medical
4 personnel to treat DECEDENT. The delay of medical care to DECEDENT caused
5 DECEDENT extreme physical and emotional pain and suffering, and was a
6 contributing cause of DECEDENT's death.

7 44. The denial of medical care by Defendants DOE OFFICERS deprived
8 DECEDENT of his right to be secure in his person against unreasonable searches
9 and seizures as guaranteed to DECEDENT under the Fourth Amendment to the
10 United States Constitution and applied to state actors by the Fourteenth Amendment.

11 45. As a result of the foregoing, DECEDENT suffered great physical pain
12 and emotional distress up to the time of his death, and also suffered loss of
13 enjoyment of life, loss of life, and loss of earning capacity.

14 46. Defendants DOE OFFICERS knew that failure to provide timely
15 medical treatment to DECEDENT could result in further significant injury or the
16 unnecessary and wanton infliction of pain, but disregarded that serious medical
17 need, causing DECEDENT great bodily harm and death.

18 47. The conduct of DOE OFFICERS was willful, wanton, malicious, and
19 done with reckless disregard for the rights and safety of DECEDENT and therefore
20 warrants the imposition of exemplary and punitive damages as to Defendants DOE
21 OFFICERS.

22 48. As a result of their misconduct, Defendants DOE OFFICERS are liable
23 for DECEDENT's injuries, either because they were integral participants in the
24 wrongful detention and arrest, or because they failed to intervene to prevent these
25 violations.

26 49. Plaintiffs bring this claim as successors-in-interest to DECEDENT, and
27 seek both survival and wrongful death damages for the violation of DECEDENT's
28

1 rights. Plaintiffs also seek funeral and burial expenses and attorney's fees under this
2 claim.

3
4 **FOURTH CLAIM FOR RELIEF**

5 **Due Process—Interference with Familial Relationship (42 U.S.C. § 1983)**

6 (Against Defendants DOE OFFICERS)

7 50. Plaintiffs repeat and re-allege each and every allegation in paragraphs 1
8 through 49 of this Complaint with the same force and effect as if fully set forth
9 herein.

10 51. DECEDENT had a cognizable interest under the Due Process Clause of
11 the Fourteenth Amendment of the United States Constitution to be free from state
12 actions that deprive him of life, liberty, or property in such a manner as to shock the
13 conscience, including but not limited to unwarranted state interference in
14 DECEDENT's familial relationships.

15 52. Plaintiffs had a cognizable interest under the Due Process Clause of the
16 Fourteenth Amendment of the United States Constitution to be free from state
17 actions that deprive them of life, liberty, or property in such a manner as to shock
18 the conscience, including but not limited to unwarranted state interference in
19 Plaintiffs' familial relationship with their son, DECEDENT.

20 53. The aforementioned actions of DOE OFFICERS, along with other
21 undiscovered conduct, shock the conscience, in that they acted with deliberate
22 indifference to the constitutional rights of DECEDENT and Plaintiffs, and with
23 purpose to harm unrelated to any legitimate law enforcement objective.

24 54. DOE OFFICERS thus violated the substantive due process rights of
25 Plaintiffs to be free from unwarranted interference with their familial relationship
26 with DECEDENT, their son.

27 55. As a direct and proximate cause of the acts of DOE OFFICERS,
28 Plaintiffs have suffered emotional distress, mental anguish, and pain. Plaintiffs have

1 also been deprived of the life-long love, companionship, comfort, support, guidance
2 society, care, and sustenance of DECEDENT, and will continue to be so deprived
3 for the remainder of their natural lives.

4 56. The conduct of DOE OFFICERS was willful, wanton, malicious, and
5 done with reckless disregard for the rights and safety of DECEDENT and Plaintiffs
6 and therefore warrants the imposition of exemplary and punitive damages as to
7 Defendants DOE OFFICERS.

8 57. Plaintiffs seek wrongful death damages under this claim in their
9 individual capacities and also seek survival damages for the violation of
10 DECEDENT's due process right. Plaintiffs also seek funeral and burial expenses
11 and attorney's fees.

12
13 **FIFTH CLAIM FOR RELIEF**

14 **Municipal Liability – Ratification (42 U.S.C. § 1983)**

15 (Against Defendants CITY and DOES 6-10)

16 58. Plaintiffs repeat and re-allege each and every allegation in paragraphs 1
17 through 57 of this Complaint with the same force and effect as if fully set forth
18 herein.

19 59. Defendants DOE OFFICERS acted under color of law.

20 60. The acts of DOE OFFICERS deprived DECEDENT and Plaintiffs of
21 their particular rights under the United States Constitution.

22 61. Upon information and belief, a final policymaker, acting under color of
23 law, who had final policymaking authority concerning the acts of Defendants DOE
24 OFFICERS, ratified (or will ratify) Defendants the acts of DOE OFFICERS and the
25 bases for them. Upon information and belief, the final policymaker knew of and
26 specifically approved of (or will specifically approve of) Defendants DOE
27 OFFICERS' acts.

3 63. On information and belief, Defendants DOE OFFICERS were not
4 disciplined, reprimanded, retrained, suspended, or otherwise penalized in connection
5 with DECEDENT's death.

65. Accordingly, Defendants CITY and DOES 6-10 each are liable to
Plaintiffs for compensatory damages under 42 U.S.C. § 1983.

SIXTH CLAIM FOR RELIEF

(Against Defendants CITY and DOES 6-10)

23 68. Defendants DOE OFFICERS acted under color of law.

70. The training policies of Defendant CITY were not adequate to train its police officers to handle the usual and recurring situations with which they must deal, including with regard to the use of force and positional and restraint asphyxia.

1 79. On information and belief, Defendants DOE OFFICERS were not
2 disciplined, reprimanded, retrained, suspended, or otherwise penalized in connection
3 with DECEDENT's death.

4 80. Defendants CITY and DOE OFFICERS, together with other CITY
5 policymakers and supervisors, maintained, inter alia, the following unconstitutional
6 customs, practices, and policies:

- 7 (a) Using excessive force, including excessive deadly force and
8 improperly restraining subjects that are being taken into custody;
- 9 (b) Providing inadequate training regarding the use of force,
10 including with regard to positional and restraint asphyxia;
- 11 (c) Employing and retaining as police officers individuals such as
12 Defendants DOE OFFICERS, whom Defendant CITY at all
13 times material herein knew or reasonably should have known
14 had dangerous propensities for abusing their authority and for
15 using excessive force;
- 16 (d) Inadequately supervising, training, controlling, assigning, and
17 disciplining CITY police officers, and other personnel, including
18 Defendants DOE OFFICERS, whom Defendant CITY knew or
19 in the exercise of reasonable care should have known had the
20 aforementioned propensities and character traits;
- 21 (e) Maintaining grossly inadequate procedures for reporting,
22 supervising, investigating, reviewing, disciplining and
23 controlling misconduct by CITY police officers;
- 24 (f) Failing to adequately discipline CITY police officers for the
25 above-referenced categories of misconduct, including "slaps on
26 the wrist," discipline that is so slight as to be out of proportion to
27 the magnitude of the misconduct, and other inadequate discipline
28 that is tantamount to encouraging misconduct;

- 1 (g) Announcing that unjustified uses of force are “within policy,”
 2 including uses of force that were later determined in court to be
 3 unconstitutional;
- 4 (h) Even where uses of force are determined in court to be
 5 unconstitutional, refusing to discipline, terminate, or retrain the
 6 officers involved;
- 7 (i) Encouraging, accommodating, or facilitating a “blue code of
 8 silence,” “blue shield,” “blue wall,” “blue curtain,” “blue veil,”
 9 or simply “code of silence,” pursuant to which police officers do
 10 not report other officers’ errors, misconduct, or crimes. Pursuant
 11 to this code of silence, if questioned about an incident of
 12 misconduct involving another officer, while following the code,
 13 the officer being questioned will claim ignorance of the other
 14 officers’ wrongdoing; and
- 15 (j) Maintaining a policy of inaction and an attitude of indifference
 16 towards soaring numbers of police misconduct with regards to
 17 the use of force, including by failing to discipline, retrain,
 18 investigate, terminate, and recommend officers for criminal
 19 prosecution who participate in the use of force against unarmed
 20 people.

21 81. The aforementioned unconstitutional customs, practices, and policies,
 22 in addition to the ratification of the deficient customs, practices, and policies, are
 23 evidenced by the number of prior cases involving the use of deadly force against an
 24 unarmed person by a police officer working for the COPD.

25 82. By reason of the aforementioned acts and omissions, Plaintiffs have
 26 suffered loss of the love, companionship, affection, comfort, care, society, training,
 27 guidance, and past and future support of DECEDENT. The aforementioned acts and
 28

1 omissions also caused DECEDENT's pain and suffering, loss of enjoyment of life,
2 and death.

3 83. Defendants CITY and DOES 6-10, together with various other
4 officials, whether named or unnamed, had either actual or constructive knowledge
5 of the deficient policies, practices and customs alleged in the paragraphs above.
6 Despite having knowledge as stated above, these defendants condoned, tolerated and
7 through actions and inactions thereby ratified such policies. Said defendants also
8 acted with deliberate indifference to the foreseeable effects and consequences of
9 these policies with respect to the constitutional rights of DECEDENT, Plaintiffs,
10 and other individuals similarly situated.

11 84. By perpetrating, sanctioning, tolerating and ratifying the outrageous
12 conduct and other wrongful acts, DOES 6-10 acted with intentional, reckless, and
13 callous disregard for the life of DECEDENT and for DECEDENT's and Plaintiffs'
14 constitutional rights. Furthermore, the policies, practices, and customs implemented,
15 maintained, and still tolerated by Defendants CITY and DOES 6-10 were
16 affirmatively linked to and were a significantly influential force behind the injuries
17 of DECEDENT and Plaintiffs.

18 85. Accordingly, Defendants CITY and DOES 6-10 each are liable to
19 Plaintiffs for compensatory damages under 42 U.S.C. § 1983.

20 86. Plaintiffs bring this claim individually and as successors in interest to
21 DECEDENT, and seek both survival and wrongful death damages under this claim.
22 Plaintiffs also seek attorney's fees under this claim.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiffs CYNTHIA BRIONES and MAURICE BRIONES request entry of judgment in their favor and against Defendants CITY of Ontario and DOES 1-10, inclusive, as follows:

- A. For compensatory damages, including both survival damages and wrongful death damages under federal law, in the amount to be proven at trial;
- B. For funeral and burial expenses, and loss of financial support;
- C. For punitive damages against the individual defendants in an amount to be proven at trial;
- D. For interest;
- E. For reasonable attorneys' fees, including litigation expenses;
- F. For costs of suit; and
- G. For such further other relief as the Court may deem just, proper, and appropriate.

DATED: March 28, 2017

LAW OFFICES OF DALE K. GALIPO
GEORGE M. ROSENBERG

By _____ s/ Dale K. Galipo

Dale K. Galipo
George M. Rosenberg
Attorneys for Plaintiffs

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury.

DATED: March 28, 2017

LAW OFFICES OF DALE K. GALIPO
GEORGE M. ROSENBERG

By _____ s/Dale K. Galipo

Dale K. Galipo
George M. Rosenberg
Attorneys for Plaintiffs